IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4722 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MIDHUSINH VIJAYSINHJI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4722 of 2002

MR DF AMIN for Petitioner No. 1

MR AP BHATT A.G.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/09/2004

ORAL JUDGEMENT

1.0 The petitioner has by way of this petition challenged the order dated 16th June, 2000 passed by the

respondent no. 2 whereby in the public interest the licenses of the petitioner and others were revoked, and the said order was confirmed by respondent no.1 vide order dated 1st March, 2002 in Appeal No. Havad/122000/3301/399/M.

2.0. Heard Mr. Amin learned advocate for the petitioner and Mr. Bhatt learned A.G.P. for the respondent authorities. From the record it appears that the respondents have filed their reply wherein in para 4, 5 and 6, it has been stated as under :-

"4. I submit that in the year 1992 there were clashes between the two communities (Darbar and Rajput) in the village Tharad and as a result of those clashes two members of Rajput community were shot dead by the persons belonging to the other community. The said offence was registered at No. 6/92 at Tharad Police Station for the offence punishable under Section 302, 307, 364, 120-B of the I.P.C. At that time arm licenses of 11 persons were withheld for the purpose of maintaining law and order situation. Petitioner was one of them.

5. I submit that respondent no. 2 had received a recommendation from the District Superintendent of Police of the District that in order to maintain law and order situation in the village, arm licenses of the above 11 persons were required to be confiscated. Therefore, respondent no. 2 issued show cause notice to those 11 persons and personal hearing was given to them.

6. I submit that it is pertinent to notice that petitioner is a family member of the main accused in the above referred offence who is absconding for last 8 years with his weapon. Bearing this fact in mind with a view to avoid further clashes between the communities, respondent no. 2 exercising powers under Section 17 of the Arms Act, cancelled the license of the petitioner. I submit that the decision of respondent no. 2 was valid in the eyes of law."

3.0. Having gone the record of the case, it is clear that findings given by the authorities with regard to involvement of the the petitioner in a criminal case has not been established on the record. Thus, looking to the peculiar facts and circumstances of the case, a consensus has been arrived at between the parties and on the basis of such consensus the matter shall be remanded to the District Magistrate, Banaskantha for deciding the issue afresh.

3.1. In view of the above, the petition is partly allowed. The orders passed by respondent no. 1 as well as respondent no.2 are quashed and set aside.

3.2. The matter is remanded to the District Magistrate for fresh decision. The District Magistrate shall examine the facts afresh by allowing the parties to adduce evidence and after hearing the parties decide the matter without being influenced by the fact that earlier license was not granted to the petitioner. The aforesaid exercise shall be carried out within a period of two months from the date of receipt of the order of this Court.

4.0. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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